

SB 141 is a bill to harmonize definitions in the Montana Code that address CO2 Sequestration and Enhanced Oil Recovery.

Currently, Montana Code contains two different definitions for Carbon Dioxide pertaining to Sequestration and Enhanced Oil Recovery projects in Montana. One definition is contained in the common carrier statutes; the other version is contained in the tax code as part of Governor Schweitzer's Clean and Green legislation in 2007. This legislation, SB 141, would duplicate the language contained in the Green and Clean statute in the common carrier statutes.

The bill may appear lengthy but it actually just repeats one change in several different sections of the code. And that change is incorporating the tax code definition in to the common carrier code.

It is important to call your attention to the different definitions. The common carrier language simply states: "carbon dioxide produced in the combustion or gasification of fossil fuels." (69-13-101, MCA).

The Class 15 definitional language is much more precise and states: "carbon dioxide from a plant or facility that produces or captures carbon dioxide to a carbon sequestration point, including closed loop EOR operations. A plant or facility that produces or captures carbon dioxide is defined in this section as a facility that produces a flow of carbon dioxide that can be sequestered or used in closed loop EOR operations; it specifically excludes wells from which the primary product is carbon dioxide." (15-6-158, MCA).

Denbury's CO2 EOR project is well underway. The pipeline and attendant equipment is qualifying property under Class 15 and the legacy Bell Creek field south of Broadus is just now being pressurized and CO2 injection is beginning. In addition, we have received PSC certification as a common carrier for the CCA lateral from Bell Creek to Cedar Creek Anticline. We believe Montana, with the efforts that the legislature and the governor have undertaken in the past, is on the forefront with a legal framework that promotes such cutting edge technology and production techniques and we are excited about the benefits that our project will bring to the state of Montana. Our project is moving forward and we are grateful for the foresight you have shown. However, by harmonizing these different definitions now, Montana will create an even more predictable environment in which to operate. As a result, we believe the language adopted in the Clean and Green legislation is better suited for fostering predictability and promoting economic opportunity and should be uniformly used throughout Montana law.

We ask for a Do Pass on SB 141.

Respectfully submitted on behalf of Denbury Resources, Inc.,

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(e) "Hydroelectric pumped storage" means a process that converts electrical energy to potential energy by pumping water to a higher elevation, where it can be stored indefinitely and then released to pass through hydraulic turbines and generate electrical energy.

(f) "Regenerative fuel cell" means a device that produces hydrogen and oxygen from electricity and water and alternately produces electrical energy and water from stored hydrogen and oxygen.

(g) "Wind generation facilities" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.

(5) (a) The department of environmental quality shall determine whether to certify that a transmission line meets the criteria of subsection (1)(x), (1)(y), or (1)(z), as applicable, based on an application provided for in 15-24-3112. The department of environmental quality shall review the certification 10 years after the line is operational, and if the property no longer meets the requirements of subsection (1)(x), (1)(y), or (1)(z), the certification must be revoked.

(b) If the department of revenue finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.

(6) Class fourteen property is taxed at 3% of its market value.

History: En. Sec. 1, Ch. 563, L. 2005; amd. Sec. 11, Ch. 2, Sp. L. May 2007; amd. Sec. 6, Ch. 277, L. 2009; amd. Sec. 4, Ch. 357, L. 2009; amd. Sec. 4, Ch. 309, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 309 inserted (1)(i), (1)(j), (1)(k), and (1)(l) relating to energy storage facilities; inserted (1)(m) relating to battery energy storage systems; in (4) inserted definitions of compressed air energy storage, energy storage facilities, flywheel storage, hydroelectric pumped storage, and regenerative fuel cell; and made minor changes in style. Amendment effective October 1, 2011.

Applicability: Section 7, Ch. 309, L. 2011, provided: "[Sections 1 through 4] [15-6-137, 15-6-141, 15-6-156, 15-6-157] apply to tax years beginning after December 31, 2011."

15-6-158. Class fifteen property — description — taxable percentage. (1) Class fifteen property includes:

(a) carbon dioxide pipelines certified by the department of environmental quality under 15-24-3112 for the transportation of carbon dioxide for the purposes of sequestration or for use in closed-loop enhanced oil recovery operations;

(b) qualified liquid pipelines certified by the department of environmental quality under 15-24-3112;

(c) carbon sequestration equipment;

(d) equipment used in closed-loop enhanced oil recovery operations; and

(e) all property of pipelines, including pumping and compression equipment, carrying products other than carbon dioxide, that originate at facilities specified in 15-6-157(1), with at least 90% of the product carried by the pipeline originating at facilities specified in 15-6-157(1) and terminating at an existing pipeline or facility.

(2) For the purposes of this section, the following definitions apply:

(a) "Carbon dioxide pipeline" means a pipeline that transports carbon dioxide from a plant or facility that produces or captures carbon dioxide to a carbon sequestration point, including a closed-loop enhanced oil recovery operation.

(b) "Carbon sequestration" means the long-term storage of carbon dioxide from a carbon dioxide pipeline in geologic formations, including but not limited to deep saline formations, basalt or oil shale formations, depleted oil and gas reservoirs, unminable coal beds, and closed-loop enhanced oil recovery operations.

(c) "Carbon sequestration equipment" means the equipment used for carbon sequestration, including equipment used to inject carbon dioxide at the carbon sequestration point and equipment used to retain carbon dioxide in the sequestration location.

(d) "Carbon sequestration point" means the location where the carbon dioxide is to be confined for sequestration.

(e) "Closed-loop enhanced oil recovery operation" means all oil production equipment, as described in 15-6-138(1)(c), owned by an entity that owns or operates an operation that, after

construction, installation, and testing has been completed and the full enhanced oil recovery process has been commenced, injects carbon dioxide to increase the amount of crude oil that can be recovered from a well and retains as much of the injected carbon dioxide as practicable, but not less than 85% of the carbon dioxide injected each year absent catastrophic or unforeseen occurrences.

(f) "Liquid pipeline" means a pipeline that is dedicated to using 90% of its pipeline capacity for transporting fuel or methane gas from a coal gasification facility, biodiesel production facility, biogas production facility, or ethanol production facility.

(g) "Plant or facility that produces or captures carbon dioxide" means a facility that produces a flow of carbon dioxide that can be sequestered or used in a closed-loop enhanced oil recovery operation. This does not include wells from which the primary product is carbon dioxide.

(3) Class fifteen property does not include a carbon dioxide pipeline, liquid pipeline, or closed-loop enhanced oil recovery operation for which, during construction, the standard prevailing wages for heavy construction, as provided in 18-2-414, were not paid during the construction phase.

(4) Class fifteen property is taxed at 3% of its market value.

History: En. Sec. 7, Ch. 2, Sp. L. May 2007; amd. Sec. 7, Ch. 277, L. 2009.

15-6-159. Class sixteen property — description — taxable percentage. (1) Class sixteen property includes high-voltage direct-current converter stations that are constructed in a location and manner so that the converter station can direct power to two different regional power grids.

(2) Class sixteen property does not include property described in subsection (1) for which the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, was not paid during the construction phase.

(3) (a) The department shall determine whether to certify that the property meets the criteria of subsection (1).

(b) If the department finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.

(4) Class sixteen property is taxed at 2.25% of its market value.

History: En. Sec. 8, Ch. 2, Sp. L. May 2007; amd. Sec. 8, Ch. 277, L. 2009.

15-6-160 through 15-6-190 reserved.

15-6-191. Repealed. Sec. 4, Ch. 6, L. 2009.

History: En. Sec. 12, Ch. 693, L. 1979; amd. Sec. 1, Ch. 101, L. 1981; amd. Sec. 65, Ch. 575, L. 1981; amd. Sec. 3, Ch. 632, L. 1983; amd. Sec. 3, Ch. 663, L. 1985; amd. Sec. 9, Ch. 574, L. 1995; Sec. 15-6-151, MCA 1997; reds. 15-6-191 by Code Commissioner, 1999.

15-6-192. Application for classification as new industrial property. (1) Any person, firm, or other group seeking to qualify its property for classification as new industrial property under class five, as provided in 15-6-135, shall make application to the department on a form provided by the department.

(2) The department shall promulgate rules for the determination of what constitutes an adverse impact, taking into consideration the number of people to be employed and the size of the community in which the location of the industrial property is contemplated.

(3) If the department makes an initial determination that the industrial property qualifies as new industrial property under class five, it shall publish notice of and hold a public hearing to determine whether the property should retain this classification.

(4) Local taxing authority officials may waive their objections to the property's classification in class five if the owner of the new industrial property agrees to prepay property taxes on the property during the construction period. The maximum amount of prepayment is the amount of tax the owner would have paid on the property if it had not been classified under class five.

(5) If a new industrial facility qualifies under class five, its property tax payment may not be reduced for reimbursement of its prepaid taxes as provided in 15-16-201 until the class five qualification expires.

2011 MCA